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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

RAYMOND WHITNEY DOWNING,

Petitioner - Appellant,

v.

UNITED STATES OF AMERICA,

Respondent - Appellee.

No. 05-35317

D.C. No. CV-01-06117-ALA

MEMORANDUM^{*}

Appeal from the United States District Court
for the District of Oregon
Ann L. Aiken, District Judge, Presiding

Submitted November 8, 2005^{**}

Before: WALLACE, LEAVY, and BERZON, Circuit Judges.

Raymond Whitney Downing appeals the district court's denial of his 28
U.S.C. § 2255 motion challenging the sentence imposed following his guilty plea

^{*} This disposition is not appropriate for publication and may not be
cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} This panel unanimously finds this case suitable for decision without
oral argument. *See* Fed. R. App. P. 34(a)(2).

conviction on multiple counts of bank robbery. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

Downing contends that *United States v. Booker*, 125 S. Ct. 738 (2005), and *Blakely v. Washington*, 542 U.S. 296 (2004), should be applied retroactively to cases on collateral review, and that his Sixth Amendment rights were violated at sentencing because the district court sentenced him as a career offender on facts neither charged in the indictment nor proven to a jury beyond a reasonable doubt. Downing's request for retroactive application of *Booker* and *Blakely* is foreclosed by *United States v. Cruz*, 423 F.3d 1119, 1120 (9th Cir. 2005) (holding that "the rule announced by *Booker* . . . does not operate retroactively").

AFFIRMED.